

LRB 3379
AB 698



Wisconsin Coalition of Independent Living Centers

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Suggestion is to extend the current
Wisconsin Caregiver's Law to
apply to all Licensed and Certified
Employers of Personal Care
Workers.

Maureen Ryan,
Exec. Dir
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WCILC



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Kevin R. Hayden, Secretary

January 22, 2008

TO: Assembly Committee on Aging and Long Term Care
FROM: Katie Plona, DHFS legislative liaison
RE: Assembly Bill 698

Good afternoon. I'm Katie Plona, legislative liaison for the Department of Health and Family Services. Rep. Townsend and committee members, thank you for the opportunity to testify for information only on Assembly Bill 698.

First, I would like to say that the Department supports the intent of Rep. Rhoades' and Sen. Carpenter's legislation to require agencies that place personal care workers in the homes of vulnerable persons to provide the results of the worker's background check. This is another tool to empower consumers by making sure they are aware of any criminal history in a personal care worker's background, such as theft or battery, which may give them cause for concern to have the caregiver working in their home.

I would like to use my testimony to focus on some questions that arise with the legislation as currently drafted and offer to work with the authors to address each of them.

1. Under current law, personal care workers are not always covered in the state's Caregiver Background Check program. The Caregiver Background Check law requires DHFS-approved entities to run background checks on all of their employees. Personal care worker agencies are not DHFS-approved entities. For example, home health care agencies are covered under the Caregiver Background Check statutes, but independent, non-home health agency and personal care worker agencies are not.

This results in a situation where a personal care worker will receive a background check if a home health care agency employs her but not if a non-covered entity, such as a temp agency like Manpower, Inc. or an agency that exclusively provides personal care workers, employs her.

The other nuance is that agencies that provide personal care services are required to run background checks on their employees as a condition of serving a Medicaid-waiver program participant, regardless of whether they are licensed by DHFS. So, again, you may have some agencies that are running background checks because they participate in the Medicaid-waiver reimbursement program and other agencies with private-pay clients that do not run background checks.

DHFS is able to enforce the Caregiver Background law through license requirements, complaints and surveys and we have some tools to enforce the Medicaid-waiver program provision through adherence to state-county contracts.

With all of this being said, I do want to note that many agencies that are not required to do background checks do them anyway as part of their hiring processes. This is a process we encourage all entities, licensed or otherwise, to utilize to further protect vulnerable consumers.

2. AB 698 reads that "a personal care agency that employs or contracts with a caregiver to serve as a personal care worker in a private residence shall disclose to the client, or to his or her guardian, information regarding the caregiver that is obtained by the personal care worker agency." We have a question about whether this means that agencies that currently do not conduct background checks on their personal care workers won't fall within the scope of AB 698, or whether this language means they will have to start running background checks so they have information to disclose to the client.
3. The term "personal care worker agency" is defined in statute as having the meaning specified by DHFS in rule. In rule, DHFS defines personal care worker agency as being a home health agency that meets certain criteria. For the purpose of achieving the authors' intent and to clarify the application of AB 698, DHFS recommends that, rather than using the term "personal care work agency" in the bill, it may be more inclusive to define and use the term "personal care services." That way, any agency, business or organization that provides personal care services must adhere to the disclosure provisions in AB 698.
4. AB 698 requires disclosure of background checks to clients once every two years. The Caregiver Background Check law requires an employer to run a check on each employee at the time of new employment and once every four years. DHFS believes there should be consistency in background checks amongst all providers. Arguments can be made to do background checks for all caregivers once every two years and DHFS would like to be involved in any discussions to do that. But, the main point of my comments on this item is to say that DHFS believes whatever the requirement is for one caregiver should be the same for all caregivers.

Thank you again for the opportunity to testify on AB 698. Again, DHFS would like to work with the bill's authors and others interested in the legislation to address these questions. We think sharpening the definitions in the bill will clarify the authors' intent and help the Department and providers follow it. I'm happy to take any questions committee members may have.



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WPSA Comments on Assembly Bill 698 and Senate Bill 393 Background Checks for Personal Care Workers

The Wisconsin Personal Services Association (WPSA) is a coalition of personal care providers represented by private agencies, independent living centers, home health agencies, county departments, and other interested parties from every county in the State of Wisconsin. This association represents over 11,000 consumers who rely on personal care services and other in-home services in order to live independently in their residences. WPSA also represents as many personal care workers as consumers, hundreds of registered nurses and other support staff who work to provide quality, consumer-centered personal care services to persons with disabilities and the elderly.

WPSA appreciates the opportunity to comment on Assembly Bill 698 and Senate Bill 393 – Background Checks for Personal Care Workers. Like you, WPSA is very concerned about and committed to keeping our consumers out of harm's way by ensuring that personal care workers are qualified and competent in all employment areas. To this end, WPSA supports the current Wisconsin Criminal Background Check Law which requires long-term care providers to obtain background information on caregivers every four years.

However, WPSA has concerns about this proposal for the following reasons:

- This bill requires personal care worker agencies to obtain updated background information regarding its caregivers every two years. The current law requires long-term care providers to obtain updated background information regarding caregivers every four years. The criteria for background checks for long-term care providers should be the same for personal care workers as for the many other caregivers working for long-term providers, such as home health nurses, home health aids and private duty nurses. There would be inconsistency for many long-term care providers that would be required to update background checks every four years and personal care providers that would be required to update background checks every two years.
- The current state background check requirements are working adequately as evidenced by the data from the Wisconsin Fingerprinting Background Pilot Program that ended last year whereby Wisconsin providers did not have any substantial fingerprinting criminal background "hits" to warrant more stringent background law requirements. The current law seems to be working well to identify direct care workers with undesirable criminal backgrounds.
- In the Legislative Reference Bureau analysis of this bill, it says that "this bill provides that a personal care worker agency that employs or contracts with a caregiver to work in a private residence must disclose to the client, or to his or her

guardian, any information the agency obtains concerning the caregiver's criminal history or history of child abuse or neglect, abuse or neglect of a client, misappropriation from a client, or denial of licensing or certification to service as a caregiver entity." Criminal history is a listing of all arrests and charges which includes misdemeanor charges. Providers would be put in a position of releasing information that would have nothing to do with the job duties and/or responsibilities of care giving (example: some traffic violations can be misdemeanors).

- WPSA believes this bill may not help in the very rare cases of abuse/neglect/theft such as the case identified in the Wisconsin State Journal that was attached to the proposal's circulation memos. The fact is that the caregiver in that article was not employed by a personal care agency; she was hired and paid directly by the consumer.
- There may be employment discrimination issues involved. For example, can a provider agency refuse to hire an individual based upon criminal history unrelated to the caregiver law? If clients would not want a caregiver with a history of any kind, are there employment criteria that specify the crime had to "substantially relate to the care of the client or the job for which the individual is being hired?"
- In a time when demand for caregivers is growing and we want to spend money and time recruiting caregivers into this field, the bill would make this more difficult.
- This bill may send a message to personal care workers that they are less trustworthy than other long-term care workers.
- This bill would create additional costs for agencies/providers, consumers and "the system." Providers are having problems maintaining current costs of operating businesses based on low reimbursement rates.

Please don't hesitate to contact the following WPSA representatives for further information or discussion in regards to this bill:

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Gerry Born, WPSA Legislative Chair
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Thank you for your time and consideration.



Memorandum

To: Rep. John Townsend, Chair
Members of the Assembly Committee on Aging and Long-Term Care
From: LuAnne Barnet, President
Date: Tuesday, January 22, 2008
Re: Concern with Passage of Assembly Bill 698 as Currently Written

The Residential Services Association of Wisconsin (RSA Wisconsin) is a not-for-profit membership and service organization comprised of operators of all community living arrangements and interested agencies and citizens throughout the State of Wisconsin.

It is the philosophy of RSA Wisconsin to encourage and endorse the provision of quality services in a homelike setting to individuals in need of transitional services, to aid them in achieving the maximum level of independent living possible.

RSA Wisconsin has identified several issues of concern that we are asking the Committee to consider. RSA Wisconsin recognizes the intent of the authors of this legislation and understands their overall motivation to improve Wisconsin's long-term care system. To that endeavor, RSA Wisconsin would like to work with the authors and the committee members to improve the bill to deal with the concerns we have identified below.

RSA Wisconsin does support the existing Wisconsin Caregiver Background Check Law. However, we are concerned with the divergence between the background check regulation and notification requirements of Personal Care Agencies \ Personal Care Workers as compared to the vast majority of other types of providers in Wisconsin's healthcare system.

If this legislation would benefit the consumer of Personal Care services the question must be posed, should this legislation be expanded to all other types of healthcare providers and direct caregivers?

RSA Wisconsin

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Concerns \ Questions:

- **Two-Year vs. Four-Year Criminal Background Checks.** What is the intent or reasoning behind the requirement of performing criminal background checks every 2-years for direct caregivers employed by a personal care agency as compared to the 4-year Caregiver Criminal Background Law requirement on other healthcare providers?
- **State Share of Costs Associated with Unfunded Mandate.** The Wisconsin Legislature has been unable to provide adequate reimbursement under CIP, COP, Community Aids and other Medicaid Waiver programs for providing care services. With the imposition of another mandate and our struggle to provide living wages to persons who provide actual hands-on care, would the legislature consider sharing the costs of these increased number of background checks?
- **Release of Personal Information that does not Correlate to Duties.** Why does this legislation go beyond the existing Criminal Background Check Law and Wisconsin's Fair Employment Act in requiring the release of information that would have no direct correlation to the duties and responsibility of being a direct caregiver.

AB-698 requires that "any information the agency obtains concerning the caregiver's criminal history or history of child abuse or neglect, abuse or neglect of a client, misappropriation from a client, or denial of licensing or certification to serve as a caregiver entity".

- **Job Discrimination – Employer Liability.** Wisconsin's Fair Employment Act prohibits discrimination because of a criminal record or pending charge; however, it is not discrimination to decline to hire or license a person based on the person's arrest or conviction record if the arrest or conviction is substantially related to the circumstances of the particular job or licensed activity.

Would the employer be at risk of actual or perceived job discrimination, since what AB-698 requires the Personal Care Agency to report to the client goes beyond the protection of the Wisconsin Fair Employment Act?

At this time RSA Wisconsin cannot support the passage of AB-698 as currently drafted. However, we are committed to quality care and again reiterate our desire to work with the authors and the committee members to improve the bill to deal with the concerns we have identified.

If you should have any questions or if you would like to discuss this matter further, please feel free to contact me at the number provided.

Thank you.

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